the strongest arguments they suggest" is false. I have no clear proof that the three judges on the panel ever read my briefs or my petition! Who then drafted the summary order?

It is important to distinguish that review of the district court's grant of the summary judgment is *de novo*, whereas the standard of review for denying a FRCP Rule 59(e) motion is abuse of discretion. After nearly six years of litigation, and on the basis of a *de novo* review, one might have expected a written opinion to discuss this case.

In the opening paragraph of the Summary Order, the Court states that Pasha's complaint alleges, "Mercer failed to hire him based on national origin 'and' age discrimination .....". Pasha's complaint was always on an "and/or" basis, which obviously is easier to prove.

III. My 15-page Petition for a Rehearing was denied without stating a reason.

The full text of my petition for rehearing in the appellate court is reproduced in the appendix below on pages 41 to 57.

My petition for rehearing to the appellate court was denied in one sentence, and no reason was given for denial. This is pertinent since my petition provided detailed and specific responses to the six reasons stated in the summary order. Even a cursory glance at the petition may show the seriousness and sophistication of my arguments.

Although a dual professional person, I have been stereotyped by this court alongside other pro se plaintiffs as one to be tolerated and dismissed.

This is a motion for summary judgment, wrongly granted, which is being appealed. It requires more justification for rejection than say an appeal from a jury trial. In summary

judgment cases, there is a greater need for written justification for not sending a case to trial, and denying an American citizen of his constitutional right to trial by jury.

It may be of concern to the U.S. Supreme Court that the appellate court considers it unnecessary to provide reasons for their rulings to appellants and petitioners, may be because of their pro se status.

IV. Two decisions of the U.S. Supreme Court, relevant to this case, were ignored by the appellate court.

The Court of Appeal's Summary Order overlooks the Supreme Court's decision in *Smith et al v. City of Jackson, Mississippi*, decided on March 30, 2005, 544 U.S.__(2005), when my appeal was in submission. This Supreme Court decision confirmed the use of age statistics in age discrimination cases to establish disparate impact, so relevant to my instant case of discrimination under ADEA. The statistics regarding Mercer's hirees over the years 1997 to 2000, provided in my opening brief dated September 28, 2004 in Section II-B and II-C, (and summarized in sections B and C on page 36 below) clearly demonstrate that I was treated differently from the other applicants and there was no reasonable factor other than age ("RFOA") to explain the disparate treatment.

During oral argument held on March 4, 2005, I stated that the defendants-appellees did not make a single reference to the Supreme Court's decision in the age discrimination case *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 120 S. Ct. 2097 (2000), in their reply brief but relied instead on earlier and outdated cases in *Weinstock v. Columbia Univ.*, *Hicks* and *Guider*, etc. (Please see page 15 of Pasha's Reply Brief, or page 39 below)

Since the year 2000, *Reeves v. Sanderson Plumbing*, which established the "pretext maybe" standard on a permissive case-by-case approach, has made it easier for plaintiffs to prove employment discrimination. The *Weinstock*, *Hicks* and *Guider* cases cited by the respondents used the "pretext plus" standard.

V. Five Steps To Fraud

The Chief Judge completed five fraudulent steps to help his friends at the law firm. First, he had himself appointed to this case. Second, he appointed a panel of two more judges, with at least one subservient to his wishes. Third, he arranged a circus of an oral argument, which lasted no more than a few minutes and achieved nothing useful. Fourth, he accepted the Summary Order drafted by the law firm concerned and, finally, he denied my 15-page petition for rehearing in one sentence. To me, there is no evidence visible anywhere that he or either of the other two judges even read any of my briefs or petition. They asked me no questions and, most likely, wrote nothing. This is a complete travesty of justice.

All told, in a few minutes of his and his colleagues' time, the Chief Judge undid nine years of my efforts, since late 1996, to find a job with the respondents.

The Chief Judge may think that because there is a panel of three judges, and since he arranged the charade of an oral argument, no one will suspect any wrongdoing. He may also be of the view that no one will have the time or the interest to read a pro se's writings over six years. And, that it would be too difficult and expensive for a pro se petitioner to take the case to the U.S. Supreme Court.

Why was the Chief Judge on the panel? Is it a process of random selection or was it by design? No Judge, apart from the Chief Judge, can set up a panel willing to conform to his wishes.

Chief Judge John M. Walker, Jr., is from Yale University. Judge B. D. Parker, Jr., is also from Yale and was appointed to the Court of Appeals by President George W. Bush. Judge Richard J. Cardamone is 80 years old, a senior judge, and in poor health. The latter may simply have relied on verbal assurances given to him by Chief Judge Walker, and may not knowingly be a party to the fraud described above. Please note that neither Judge Parker nor Judge Cardamone made a single comment, oral or written, anywhere in my appeal.

On August 25, 2005, I submitted a motion to the appellate court to stay the mandate. I stated then that I would appeal the decisions of the appellate court to the U. S. Supreme Court within 90 days. Two and half months later, the panel of judges in my case has still not ruled on this motion.

VI. My age discrimination case was largely irrefutable.

My case of employment discrimination by age and/or national origin is well supported by evidence, facts, argument and precedents. This is fully laid out in my Opening Brief to the appellate court dated September 28, 2004 and is very clearly summarized in the four pages 34 to 37 in the Appendix below.

VII. The District Judge improperly granted summary judgment in favor of the respondents.

The fact that the District Judge improperly granted summary judgment in favor of the respondents is discussed fully in the

first half of my Opening Brief dated September 28, 2004, and summarized on pages 34 and 35 of the Appendix below. (See also bottom of page 38 of the Opening Brief. and Item [7] on page 52 below.)

On page 13 of the same petition (last two lines), I also state that I had provided "substantial evidence" under the *Anderson v. Liberty Lobby* standard to defeat summary judgment. I simultaneously expressed confidence that I could meet my burden of persuasion in front of a jury by either the preponderance of evidence standard or the higher clear and convincing standard. (See App., *Infra*, 55-56)

The Chief Judge and his panel have chosen to completely ignore all the facts and arguments in this case.

VIII. The District Judge's denial of the petitioner's Rule 59(e) motion, to alter or amend judgment, was an abuse of his discretion.

On pages 14 and 15 of my petition for rehearing to the appellate court, I explained why the denial of the Rule 59(e) motion, to alter or amend judgment, was an abuse of the district judge's discretion. (App., *Infra*, 56-57). Basically, the factual basis for the district court's decision to deny the Rule 59(e) motion could not be discerned.

IX. Seven reasons why the District Judge's two Opinions were drafted by the respondents' counsel.

I have always known that the two opinions of the district court dated February 2, 2004 and June 30, 2004 were drafted by respondents' law firm and have either stated or implied this in my pleadings to the courts before. (For example, please see the third paragraph on the first page of my Rule 59(e) motion to alter or amend judgment dated March 23,

2004, reproduced below as page 40, in response to the main Opinion of Judge Sweet dated February 2, 2004.)

1. A district judge is preoccupied with conducting criminal and civil bench and jury trials and in supervising discovery in multiple cases, etc. Neither he nor his few clerks have the time to write 24-page opinions on employment discrimination cases. Judge Sweet's two opinions were not simple "cut and paste" jobs since little in the texts of the opinions had ever been submitted in pleadings by either party.

2. The Opinions contain new arguments not appearing in any previous pleadings. For example, when the district judge supposedly writes in the last page of his first opinion, "Rather, it makes more sense that Alam invited Pasha to interview in Chicago 'as an accommodation to Coster", or when it is written, "If Alam had the ability and purpose to create false reports .....". It is unlikely that Judge Sweet would have made these remarks on his own. Again, it is difficult for me to believe that Judge Sweet, in his second opinion, would make 19 (string and mostly pointless) legal citations over seven pages to justify his decision. It could only be done by a law firm to earn its keep.

3. The nuances contained in the arguments are too subtle for a law clerk or a judge to appreciate within the space of a few days. It represents the extended and detailed knowledge of one or two individuals in the law firm concerned.

4. The arguments were essentially a continuation of defense counsel's arguments in their briefs.

5. The Opinions list only one defendant, whereas the honorable Judge had previously approved the inclusion of a second defendant. This continued to be the practice of defense counsel for some time.

6. Senior partners of the law firm bill at over $1,000 per hour. The writings of the firm normally contain no typographical or punctuation errors. Memos or opinions of the district court commonly contain typographical errors and some passages can at times be incomprehensible. (See, for example, Memorandum Opinion dated October 10, 2002). The two written Opinions under discussion, totaling 31 pages, contain no grammatical or punctuation mistakes.

7. Finally, and significantly, the two opinions contain little or nothing in my favor. Every fact or argument in my favor has been overlooked. How can this be the balanced opinion of a senior judge?

I have met Judge Robert W. Sweet personally twice and know him to be an honorable man. He has ruled at least once in my favor in discovery and on another important issue. I also know that he is burdened with day-to-day court responsibilities and really has little time to write lengthy legal opinions, either personally or through his clerks, on employment discrimination cases. His primary interest may be to have discovery completed and pass the case on to the appeals court for proper evaluation.

The appeals court has the time, the erudition, and the resources to evaluate these cases, if only they had the integrity!

ADDITIONAL COMMENTS

X. The Summary Judgment Death Trap. Or, how corporations circumvent jury trials.

I used to think that the Summary Judgment process came into being because judges were overburdened with too many cases on their dockets. The idea, I believed, was to screen

out those cases that did not have sufficient evidence for trial. I now know this not to be necessarily true. At least in New York and the Second Circuit, and in pro se cases, opinions of the judges seem to be drafted at times by large law firms.

It seems that the constitutional rights of pro se plaintiffs to trial by jury in lawsuits against corporations is denied by the simple process of sending discrimination cases to summary judgment. Corporations pay large sums of their shareholders' money to law firms with access to judges in order to win their cases.

Since, in Section V of my Petition for Rehearing to the appellate court (App., *Infra*, 55-56), I have clearly stated that I have "sufficient evidence" under the *Liberty Lobby* standard to prove my case by preponderance of evidence, or the higher clear and convincing standard, I have no doubt that if my case were sent to trial before a jury, the outcome would be vastly different.

XI. Winston & Strawn LLP

Respondent's counsel, Winston & Strawn LLP, with some 850 lawyers, is one of the largest law firms in the country. They have earned, may be, $3 to 5 million from this lawsuit over the last six years from their client Marsh & McLennan Companies, Inc., the parent company of the two respondents. Being such a large and prestigious firm, they cannot countenance the loss of an employment discrimination or civil rights case to a pro se plaintiff. And, if they were defeated, they might also stand to lose their multi-billion dollar client. Accordingly, Winston & Strawn took appropriate action in this largely irrefutable employment discrimination case to have it denied in court.

If, as I have said above, Winston & Strawn can write the opinions of judges in district and appellate courts in New

York, they have a remarkable degree of control over the judicial system here. I do not say that this happens all the time, even in pro se cases, but it certainly did, repeatedly, in my case, unfortunately. All one has to do is to read my pleadings, listed on page 37 of the Appendix below, to see how manifestly unjust the courts' rulings have been in this case.

XII.

I have been treated most unfairly and have suffered pain, considerable expense, and now incredible harm, over a prolonged period of nearly six years.

During more than two years of discovery, respondent's counsel extracted every kind of information from me about my person, family and private company (including confidential personal, professional, financial, tax records, medical history, etc.). I protested providing information on my private company, which is irrelevant to this discrimination lawsuit, but the district judge decided otherwise. I am disgusted that after all that, I am faced with a biased Chief Judge, and denied the prospect of a jury trial.

I am now 60 years old and, despite efforts, have been unable to find suitable permanent employment. If I had got the job applied for, as promised by Mercer Investment Consulting, I would now have been in a position to retire comfortably.

I have incurred thousands of dollars in legal costs and expenses over six years and now, because of the Chief Judge's unscrupulous decisions, may have to pay thousands of dollars more in taxed costs to the respondents. This is in addition to the loss of an excellent job opportunity six years ago because of the respondents' illegal discriminatory actions. Let me add that the job of Principal of the company

offered to me and subsequently withdrawn entailed a salary, bonus and fringe benefits of over $400,000 per year. Over six years to date, my loss has been more than $2.4 million. This is manifestly unfair and is a gross miscarriage of justice. During the same period, the law firm concerned may have earned between $3 to 5 million in legal fees by prolonging this case to six years and more.

Actual damages claimed by me in 2000 were $7.65 million. Since Mr. Peter Coster, the former President & CEO of the main respondent, was also involved in the illegal decision not to hire me, there is a strong case for substantial punitive damages of three times as much more. (Mercer Human Resources Consulting, Inc., a subsidiary company, is the largest human resources company in the country.)

The loss of a job late in life is not an inconsequential event to the individual concerned. It destroys his or her self-esteem, affects the quality of life, and impacts that person's family life. Depending on the individual's personal circumstances, it became, in some cases, a slow death sentence. That is how serious employment discrimination has been in certain instances. Let us therefore remember that capital punishment cases require a jury for proper evaluation and have to be proven beyond a reasonable doubt. Such cases are not disposed of by summary judgment, or by two or three paragraphs written or approved by a prejudiced judge.

Mr. Stephen L. Sheinfeld is a partner of Winston & Strawn and the counsel of record. In early 2003, he threatened and tried to intimidate me while I was in his office premises. Acrimonious letters were exchanged between the parties at that time. Given that millions of dollars in legal fees are involved, it would not surprise me if even more serious threats and actions were now directed towards me. Accordingly, I have taken the precaution of having detailed, confidential letters placed with a known lawyer and a leading

newspaper journalist in case anything unexpected or violent happens to me. I have included a short list of persons and their accomplices who should be interrogated in case of such a dire eventuality.

XIII. My First Amendment rights. Take it to the Media.

I will dedicate the rest of my life to publicizing the injustice suffered over six years in the hope that it will benefit other unwary pro se litigants and protect them from a similar fate. I shall use the Internet, and its databanks, to find other pro se litigants who have been similarly mistreated by this Chief Judge. We could then consider what joint action, if any, to take against him.

I shall attempt to expose the conduct of big corporations, who spend millions of dollars on large law firms to influence the courts in the state of New York and the Second Circuit. I shall obtain a paralegal license, or even become a lawyer, and help people initiate and/or conduct age discrimination, employment and civil rights lawsuits against large corporations, while avoiding the many pitfalls that I encountered over a protracted period of time. I shall use the media, as well as publications, and write books, to explain how big money and large law firms control the judicial system in New York; explain what summary judgment really is, and how large law firms draft opinions on behalf of the judges behind the scene. In short, I shall do everything possible to help restore the integrity of the judicial system and try to level the playing field for pro se plaintiffs.

All too often, it must seem too easy for big law firms and venal judges to destroy the lives of pro se plaintiffs in order to retain their multi-million dollar fees and income, and with no adverse consequences to themselves.

When a state or society is non-secular, ethics and morality are dictated by religion. In a country, such as ours, which is governed under a constitution, it is imperative that the legal system be unimpeachable. The integrity of the judicial process must never come into doubt.

CONCLUSIONS

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Dated: November 9, 2005
Stamford, Connecticut

Respectfully submitted,

IQBAL A. PASHA
Plaintiff pro se
P.O. Box 8125
2001 West Main Street
Unit 140
Stamford
Connecticut 06905-8125
(203) 324-5438

APPENDIX

Pages 24 – 57

Summary Judgment Granted By District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Index No. 00 Civ. 8362 (RWS/THK)

JUDGMENT

.....X

IQBAL A. PASHA

Plaintiff,

WILLIAM M. MERCER CONSULTING, INC.

Defendant.

..... X

Defendants William M. Mercer Investment Consulting, Inc. and Mercer Consulting Group, Inc. (collectively, "Mercer") having moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure against plaintiff Iqbal A. Pasha ("Plaintiff") dismissing Plaintiff's claims in their entirety; such motion having come before the Court; and the Court having rendered a decision by written Opinion dated February 2, 2004; it is hereby

ORDER, ADJUDGED and DECREED that judgment is granted in favor of Mercer dismissing Plaintiff's claims in their entirety and awarding Mercer its taxable costs pursuant to Local Civil Rule 54.1.

Dated: New York, New York
February 25, 2004

Robert W. Sweet, United States District Judge

(This document was entered on the docket on 3/11/04.)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 22nd day of June, two thousand and five.

PRESENT: Hon. John M. Walker, Jr.,
Chief Judge,

Hon. Richard J. Cardamone,
Hon. Barrington D. Parker,
Circuit Judges.

----------X
IQBAL A. PASHA,
Plaintiff-Appellant,

- v. -

WILLIAM M. MERCER INVESTMENT CONSULTING, INC., MCGI,
Defendants-Appellees.

DOCKET No.: 04-4381-CV
----------X

APPEARING FOR APPELLANT: IQBAL A. PASHA,
Stamford, CT

FOR APPELLEE: STEPHEN L. SHEINFELD
Winston & Strawn LLP, New York, NY

Appeal from the United States District Court for the Southern District of New York (Robert W. Sweet, District Judge).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of said district court be and it hereby is **AFFIRMED**.

Plaintiff-appellant Iqbal Pasha appeals from the March 24, 2004, judgment of the district court granting summary judgment in favor of defendants-appellees William M. Mercer Investment Consulting, Inc. and MCGI (collectively "Mercer") and dismissing Pasha's complaint alleging that Mercer failed to hire him based on national origin and age discrimination, in violation of Title VII of the Civil Rights Act of 1964 (" Title VII"), 42 U. S. C. § 2000e et seq., and the Age Discrimination in Employment Act of 1967 (" ADEA"), 29 U. S. C. § 621 et seq. Pasha also appeals the July 2, 2004, order of the district court denying his motion to alter the judgment, under Federal Rule. R. Civ. P. 59(e). We assume familiarity with the facts and with the issues raised on appeal.

We review the district court's grant of summary judgment de novo, construing the evidence in the light most favorable to the non-moving party. World Trade Ctr. Props., L. L. C. v. Hartford Fire Ins. Co., 345 F. 3d 154, 165-66 (2d Cir. 2003). The standard of review of a district court order granting or denying a motion for relief from judgment under Fed. R. Civ. P. 59(e) is abuse of discretion. See Munafo v.

Metro. Transp. Auth., 381 F. 3d 99, 105 (2d Cir. 2004). "' A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. '" Transaero, Inc. v. La Fuerza Aerea Boliviana, 162 F. 3d 724, 729 (2d Cir. 1998) (quoting Cooter & Gell v. Hartmarx Corp., 496 U. S. 384, 405 (1990)). Summary judgment is appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is "material" for these purposes if it "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U. S. 242, 248 (1986). An issue of fact is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. When, as here, a litigant is proceeding pro se, we construe that litigant's appellate briefs and other pleadings liberally and read such submissions to raise the strongest arguments they suggest. See Burgos v. Hopkins, 14 F. 3d 787, 790 (2d Cir. 1994). The rule favoring liberal construction of pro se submissions is especially applicable to civil rights claims. See Weixel v. Bd. of Ed., 287 F. 3d 138, 146 (2d Cir. 2002).

Viewing the evidence in the light most favorable to Pasha, as the district court and we are required to, we conclude that, for substantially the reasons set forth in the district court's memorandum and order, summary judgment was properly granted to Mercer. Specifically, based on our review of the record, we agree with the district court that (1) Pasha failed to establish a national origin discrimination claim because he offered no evidence that Asghar Alam, the head of Mercer's investment consulting practice and the man who initially interviewed Pasha, personally holds the bias Pasha ascribes to native Pakistanis against foreign-born Pakistanis; (2) Alam's alleged age-conscious remarks were too "isolated and ambiguous" to create an inference of discrimination; (3) the fact that Mercer has not hired many

consultants over the age of forty, in the absence of any other evidence of age discrimination, does not create an inference of discrimination; (4) the statistics Pasha set forth in his opposition papers were properly disregarded as unreliable; (5) Mercer articulated non-discriminatory reasons for its decision not to hire Pasha; and (6) Pasha did not raise a triable issue that Mercer's non-discriminatory reasons were a pretext for discrimination. Because summary judgment was properly awarded to Mercer, the district court's denial of Pasha's Rule 59(e) motion was not an abuse of discretion.

For the foregoing reasons, the judgment of the district court is hereby **AFFIRMED.**

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: Lucille Carr, Deputy Clerk

(The seal of the U.S. Court of Appeals, Second Circuit, dates this Order June 22, 2005.)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

Roseann B. MacKechnie
CLERK

Date:	8/12/05
Docket Number:	04-4381-cv
Short Title:	Iqbal A. Pasha v. William M. Mercer
DC Docket Number:	00-cv-8362
DC:	SDNY (NEW YORK CITY)
DC Judge:	Honorable Robert Sweet

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 15th day of Aug. two thousand five.

Present:

Hon. John M. Walker, Jr. Chief Judge

Hon. Richard J. Cardamone,

Hon. B. D. Parker, Jr.

CIRCUIT JUDGES.

Pasha v. Mercer

A petition for panel hearing having been filed herein by Iqbal A. Pasha

Upon consideration thereof, it is

Ordered that said petition be and it hereby is **DENIED**.

For the Court,

Roseann B. MacKechnie, Clerk

By: _____

Tracy W. Young
Motion Staff Attorney

(The seal of the U.S. Court of Appeals, Second Circuit, dates this Order August 15, 2005.)

Pasha v. Mercer Investment

Oral Argument held on March 4, 2005

(Transcript)

Chief Judge (CJ): Pasha against Mercer Investment.
Mr. Pasha you can just start.
You can start up here.

Pasha: Good morning, Your Honors.
May it please the Court, my name is Al Pasha. I am the pro se plaintiff-appellant in this case. I am not a lawyer, but I am a member of two professions. I am an Actuary and a CFA.
The respondents in this case are the Mercer Consulting Group. They own entirely William M. Mercer Investment Consulting. They are in turn owned 100% by Marsh & McLennan Companies.

CJ: Right. I think the key here is to focus on what happened in the District Court that you disagree with.

Pasha: Yes, Your Honor, ... entirely.

CJ: Because time is limited.

Pasha: Yes, Your Honor. Thank you, Your Honor.
I disagree with district court basically on three issues. My case was in the district court before Judge Robert Sweet. Judge Sweet denied me summary judgment motion. He granted it in favor of the respondents. He subsequently immediately denied a Rule 59(e) motion requesting him to alter or amend judgment.

I have three issues with this judgment. First, in my view, the Judge did not follow the standards for summary judgment with any degree of rigor. Two, there were several material facts in dispute. His two written opinions do not anywhere mention or discuss the Rule 56.1 Statement of Undisputed Facts. They are nowhere to be seen in his two opinions. No mention of it. Third, he did not apply the *MacDonnell-Douglas* standard to establish a prima

facie case or the *Reeves v. Sanderson Plumbing* [case] to establish pretext. These are Supreme Court decisions in landmark cases. The respondents do not anywhere in their brief mention the *Reeves v. Sanderson Plumbing* decision. This decision in the year 2000 made it considerably easier for plaintiffs to prove their cases in court. Respondents constantly refer to the *Weinstock*, *Hicks* and *Guider* cases, which predated the *Reeves v. Sanderson* case and have therefore been superseded.

I realize that I have the burden of persuasion in trial court. I have stated in my reply brief that I have sufficient evidence under the *Liberty Lobby* standard to prove my case before a reasonable-minded jury.

I established the four elements of my prima facie case under the *McDonnell-Douglas* standard as follows: (1) I was aged 54 when I was rejected for employment. (2) The respondents have twice accepted the fact that I was qualified for the job that I had applied for of Senior Investment Consultant. (3) I was not hired. (4) After rejecting me, the respondents went on to hire 16 investment consultants in the following twelve months. All of them were aged between 23 and 41. They were therefore 13 to 31 years younger than I was at that time.

CJ: OK. Now if you can bring your argument to a close. Say .... if you have one more thing to say, that is fine.

Pasha: Just one more thing, Your Honor.
About my national origin claim, I stated five reasons in detail in my brief.

CJ: We have your brief.

Pasha: To conclude, I would respectfully request this Court to reverse the decision of the lower court. Thank you, Your Honors.

CJ: Very well. Thank you.

Sheinfeld: Good morning, Your Honors, may it please the Court, I am Steve Sheinfeld.

CJ: Could you address the argument only that the Judge did not do a complete analysis under *McDonnell-Douglas*. I don't think ....that is not my recollection.

Sheinfeld: Your Honor, the district court properly applied the tripartite labor-shifting analysis under *McDonnell-Douglas* and went through every argument and evidence which was submitted to the court by Mr. Pasha. What the court found not only was that there was no prima facie case of national origin or age discrimination, but even if there had been a prima facie case, that there were no facts from which to conclude that there was pretext or a false reason, let alone that there was pretext for age discrimination or national origin discrimination. The court analyzed the evidence along with the inferences that could be reasonably drawn from it and decided that it did not raise a jury question as to whether Mr. Pasha was the victim of discrimination. Absent the triable issue of fact as to discrimination, summary judgment was appropriate. I would be pleased to respond to the questions that the panel asks.

CJ: All right. Mr. Pasha, you have saved some time for rebuttal.

Pasha: In response to that, Your Honor, I simply repeat what I said. About Rule 56.1 and that the *Reeves* case was not applied. In this case, there is no mention of that very important landmark case. Thank you, Your Honor, unless you have any questions.

CJ: We will let you know our decision. We have your papers. Thank you very much.

Pasha's Opening Brief (POB) dated September 28, 2004

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September 28, 2004

Citations to the Opinions of the District Court

The two opinions of the District Court are available at the website for the U.S. District Court of the Southern District of New York, *www.nysd.uscourts.gov*. (As stated on pages 16-18 of this petition, these opinions were drafted by respondents' lawyers.)

PETIITIONER'S PAST PLEADINGS

8/4/00	EEOC Complaint	Joint Appendix	A 213-232
10/31/00	Complaint in NYSD Court	Jt. App.	A 204-208
8/19/03	Reply to Summary Judgment Motion		A 111-161
10/7/03	Extracts from Sur-Reply	Jt. App.	A 83-87
3/23/04	Rule 59(e) Motion to Alter Judgment		A 32-53
28/9/04	Opening Brief to Second Circuit	*supra*	34-37
12/17/04	Reply Brief to Second Circuit	*infra*	38-39
7/6/2005	Petition for Rehearing	*infra*	41-57
11/10/05	Petition for Writ of Certiorari	*supra*	6-23

Pasha's Reply Brief (PRB) to the Court of Appeals dated December 17, 2004

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PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT DATED 2/25/04 UNDER F.R.C.P. RULE 59(e)

Preliminary Statement

On May 30, 2003, defendants William M. Mercer Investment Consulting, Inc. and Mercer Consulting Group, Inc. (referred to jointly as "Mercer") moved for summary judgment in this action. On February 25, 2004, the Court granted the motion in favor of the defendants and dismissed the case in its entirety with costs to them.

Mercer is the largest human resource consultants and actuaries in the world, who refused to hire Pasha (an Actuary and CFA) in January 2000 because of his age, then 54, and/or his national origin from Pakistan.

The Court's Opinion is dated February 2, 2004 (referred to simply as "Opinion" below) and it seems as if it was drafted almost entirely by defense counsel. It reads like an ongoing defense brief and there are few clear signs that the Court considered plaintiff's arguments. This has resulted in a serious miscarriage of justice.

Plaintiff Pasha makes this motion to alter or amend the judgment in order to correct several legal errors in the Opinion and to prevent manifest injustice to himself.

For the reasons explained below, the plaintiff respectfully requests the Court to reconsider the summary judgment granted to the defendants.

> [In this brief, Plaintiff's Memorandum of Law dated August 19, 2003 submitted in response to defendants motion for summary judgment dated May 30, 2003 is referred to as "PML1". Pasha's second Memorandum of Law dated October 7, 2003 submitted with his sur-reply papers is referred to as "PML2". The present memorandum shall be called "PML3".]

PETITION FOR REHEARING

(Submitted to the Court of Appeals for the Second Circuit on July 6, 2005)

PRELIMINARY STATEMENT

The plaintiff-appellant Iqbal A. Pasha respectfully petitions a panel/en banc rehearing of his appeal dated September 28, 2004 denied by the Court of Appeals for the Second Circuit by Summary Order ("Order") dated June 22, 2005.

The Order ignores a recent decision of the Supreme Court in *Smith v. City of Jackson* and does not adhere to the directives of another Supreme Court decision in *Reeves v. Sanderson Plumbing*. Consideration of the court is therefore requested to secure and maintain uniformity of the courts' decisions. Also, the proceedings involve the fundamental question of whether a Statement of Disputed and Undisputed Facts under Local Rule 56.1 may be ignored completely by the district court judge or the appellate court when granting or affirming summary judgment. Last, but not least, the Order is manifestly unjust to the plaintiff-appellant.

[Notes: (1) The plaintiff-appellant is referred to below simply as "Pasha" and the defendants William M. Mercer Investment Consulting, Inc. and Mercer Consulting Group, Inc. ("MCGI") together as "Mercer". (2) Pasha's opening brief dated September 28, 2004 is referred to as "POB" and his reply brief dated December 17, 2004 as "PRB". (3) As required by Local Rule 40, a copy of this Court's Summary Order is attached to this petition.]

STATEMENT OF THE ISSUES FOR REHEARING

I This Court of Appeals should consider the findings of the Supreme Court in *Smith et al v. City of Jackson, Mississippi*, decided on March 30, 2005.

II. Both the District Court and the Court of Appeals have ignored the directives of the U.S. Supreme Court in *Reeves v. Sanderson Plumbing*, 2000.

III. Both the District Court and the Court of Appeals have ignored the Statements of Disputed and Undisputed Facts submitted under Local Rule 56.1.

IV. This Court's instant Order misrepresents several facts and is manifestly unjust to Pasha.

V. Pasha established his case using Rule 56.1 and under the *McDonnell-Douglas* and *Liberty Lobby* standards.

VI. Denial of the Rule 59(e) motion was an abuse of the district judge's discretion.

HISTORICAL STATEMENT OF THE CASE

Mercer is the largest investment and human resource consulting group in the country who refused to hire Pasha (an Actuary and CFA) as a Senior Investment Consultant in January 2000 because of his age, then 54, and/or his national origin from Pakistan, although as they admit, he was qualified for the job.

Pasha commenced this action in the Southern District of New York on October 31, 2000. On May 30, 2003, defendants Mercer moved for summary judgment before the Honorable Judge Robert W. Sweet. On February 25, 2004, the Court granted the motion in favor of the defendants and dismissed the case in its entirety. Pasha moved to alter or amend the judgment under F.R.C.P. Rule 59(e). This motion was denied on June 30, 2004.

On September 28, 2004, Pasha appealed from the summary judgment dated February 25, 2004 (A-13[1]) and the denial of the Rule 59(e) motion. Defendants responded on November 30, 2004 and Pasha replied on December 17, 2004. Pasha's appeal has been denied by this Appeals Court by Summary Order dated June 22, 2005 and he now respectfully petitions a rehearing.

STATEMENT OF FACTS

Pasha had tried for a job with Mercer in December 1996 and had not been successful because there were no openings at that time. He tried again in November 1999 and a complete narration of events on this occasion is available in the Affidavit provided to the EEOC in August 2000, on page A-223 of the Appendix. This time Mercer had multiple job openings for investment consultants and in the year following plaintiff's denial, Mercer recruited no less than 16 investment consultants, all aged 41 or younger. Pasha was aged 54 at that time so all consultants recruited were between 13 and 31 years younger than him.

ARGUMENT

I. This Court of Appeals should consider the findings of the Supreme Court in *Smith et al v. City of Jackson, Mississippi*, decided on March 30, 2005.

This Court of Appeal's Summary Order overlooks the Supreme Court's decision in *Smith et al v. City of Jackson, Mississippi* decided on March 30, 2005 when Pasha's appeal was in submission. This Supreme Court decision confirmed

[1] Citations "A-" refer to Pasha's Joint Appendix submitted with opening brief on September 28, 2004.

the use of age statistics in age discrimination cases to establish disparate impact, so relevant to Pasha's instant case of discrimination under ADEA. The statistics regarding Mercer's hirees over the years 1997 to 2000, provided in Pasha's opening brief pages 27 to 31 inclusive, clearly demonstrate that Pasha was treated differently from the other applicants and there was no reasonable factor other than age ("RFOA") to explain the disparate treatment.

Smith et al v. City of Jackson, Mississippi makes it easier to win age discrimination lawsuits and it seems that now more cases will go for trial before juries.

II. Both the District Court and the Court of Appeals have ignored the directives of the U.S. Supreme Court in *Reeves v. Sanderson Plumbing.*

During oral argument held on March 4, 2005, Pasha stated that the defendants-appellees did not make a single reference to the Supreme Court's decision in the landmark age discrimination case *Reeves v. Sanderson Plumbing* in their reply brief dated November 30, 2004 but relied instead on earlier and outdated cases in *Weinstock*, *Hicks* and *Guider*, etc. (Please see page 15 of PRB). Mercer did not provide a response to this statement at oral argument and this Appeals Court has not considered this argument in their Summary Order either.

Since the year 2000, *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 120 S. Ct. 2097 (2000), which established the "pretext maybe" standard on a permissive case-by-case approach, has made it easier for plaintiffs to prove employment discrimination.

The Second Circuit's standard after *Reeves* is the "pretext maybe" analysis, in which a minimal *McDonnell Douglas* prima facie case combined with evidence that the employer's reason is false "may or may not be sufficient to sustain a finding of discrimination," depending on the evidence.

On page 21 of his opening brief, Pasha stated that the district court did not use the *Reeves v. Sanderson Plumbing* standard to establish pretext. On pages 13 and 28 of their reply brief, defendants refer to the *Weinstock v. Columbia Univ.* case, and elsewhere in their brief to *Hicks* and *Guider* (pages 30n, 33, 24 and 30n respectively), which were argued prior to the Reeves decision and used the 'pretext plus" standard, now replaced by the "pretext maybe" standard.

As explained in the opening brief (pages 32 to 38), Mercer has not provided an honest explanation and their reasons for not hiring Pasha are false and not objectively reasonable.

III. Both the District Court and the Court of Appeals have ignored the Statement of Undisputed Facts submitted under Local Rule 56.1.

During oral argument held on March 4, 2005, Pasha stated there were several disputed facts in the Statement of Undisputed Facts submitted in May 2003 by the defendants to the district court under Local Rule 56.1. He further stated that the District Judge Robert W. Sweet did not refer to these Statement of Undisputed and Disputed Facts in either of his two written Opinions but granted summary judgment to the defendants. Mercer did not provide a response to Pasha's statement at oral argument, and this Appeals Court has not considered this issue either in their instant Order.

On August 18, 2003, Pasha had responded to each and every undisputed fact listed by the defendants under Local Civil

Rule 56.1. He had disputed items 4, 9, 10 and 12 out of a total of 14 items. (A 162-167). Pasha then listed his own 19 additional undisputed facts in the same reply. Mercer did not respond to any of these facts, and the district court in its Opinion dated February 2, 2004 chose to ignore these undisputed facts completely. (Pasha cites 6 of his 19 facts on page 11 of POB). If Pasha's statement of these undisputed facts is accepted as valid, any rational jury would most likely return a verdict for him.

It seems unbelievable that summary judgment could have been granted in favor of the defendants, and subsequently affirmed, without a consideration of the plaintiff's responses and statements of undisputed and disputed facts under Local Rule 56.1.

IV. This Court's instant Summary Order misrepresents several facts and is manifestly unjust to Pasha.

The Summary Order dated June 22, 2005 misrepresents the instant case in several ways and treats Pasha unfairly. Pasha deals with this on a point-by-point basis below by quoting first the serialized comments (1) to (6) made by this Court in the Order:

(1) "Pasha failed to establish a national origin discrimination claim because he offered no evidence that Asghar Alam, the head of Mercer's investment consulting practice and the man who initially interviewed Pasha, personally holds the bias Pasha ascribes to native Pakistanis against foreign-born Pakistanis."

The statement "personally holds" above makes this a "state of mind issue". This was discussed by Pasha on page 8 of PRB, last paragraph, and on page 32 of POB, second

paragraph. Therein it was stated that such issues are properly decided by a jury.

Alam's inherent bias and state of mind when he decided not to hire the plaintiff is difficult to prove conclusively. It is difficult to prove any person's frame of mind. Alam was born in Pakistan and tends to look down on people like Pasha, the plaintiff, who were born in India, and regarded as refugees. Alam was born in Sargodha, which is in Punjab, the largest province in Pakistan, and its inhabitants discriminate against those of Sind (also in Pakistan), where the plaintiff lived. While an actuary, Alam has no professional qualifications in investments and could conceivably resent another Pakistani having dual qualifications. Another factor could be that Pasha has actual money management experience whereas Alam has none.

Pasha respectfully submits to the court that the benefit of doubt should have been given to him, the nonmovant, and a jury should rule on Alam's state of mind when he decided not to hire him. Pasha argues that the defendants should not be granted summary judgment where Alam's state of mind is at issue since the jury might disbelieve Alam or his witnesses as to this issue. *Poller v. Columbia Broadcasting Co.*, 368 U.S. 464 (1962). (Page 9 of PRB, para 2, and pages 31 and 32 of the opening brief.)

Pasha's case for discrimination on the basis of national origin was based also on Rule 56(f) of the F.R.C.P. because the defendants do not appear to employ any Pakistanis as investment consultants in the U.S. in their workforce of some 200 such consultants and refused to provide relevant employee statistics by national origin during discovery – despite the district court's order dated September 9, 2002 compelling them to do so. As a result, the plaintiff was unable to establish his case conclusively in court, and summary judgment should therefore have been denied under

Rule 56(f) of the F.R.C.P. Surprisingly, neither the district court's two Opinions, nor this court's Summary Order mentions Rule 56(f).

(2) "Alam's alleged age-conscious remarks were too 'isolated and ambiguous' to create an inference of discrimination."

Pasha's charge made to the EEOC in August 2000 stated that, during his interview, Asghar Alam, the Head of Investment Consulting, had talked about 'recruiting young people' from the actuarial side of the company's business to become Investment Consultants". (A-214). This statement was elaborated in his EEOC Affidavit. (A-225, second last paragraph).

Pasha counts there to be a total of five age remarks involving three individuals (two remarks by Alam, two by Hiner, and one implied by Blalock in writing) all in the context of his job interviews. The district judge ignored the fact that five age remarks by three of the interviewers, in the context of job interviews, show discriminatory intent, constitute direct evidence, and establish a prima facie case of employment discrimination.

In *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150 (2000), the Supreme Court ruled that age remarks are relevant evidence of age discrimination if their content indicates age animus and the speaker of the remarks was "primarily responsible" for the adverse action. The Supreme Court also chided the lower court for not heeding age remarks made months before the discriminatory event took place and stated that even one age remark in the context of the employment discriminatory act should cause concern.

Again, defendants' five specific age remarks occurred in the context of Pasha's job interviews and are all indicative of heightened age consciousness and age animus. The age remarks are discussed in Section IIA of Pasha's opening brief on pages 21 to 26. They were also discussed fully at the district court level and are available on pages A-119 to 126.

(3) "the fact that Mercer has not hired many consultants over the age of forty, in the absence of any other evidence of age discrimination, does not create an inference of discrimination."

Neither the district judge's written Opinions nor the Summary Order mention the fact that the 16 investment consultants hired by the defendants in the year 2000 (after Pasha was rejected) were between 13 and 31 years younger than Pasha's age of 54 at that time. Consider *Punahale v. United Air Lines, Inc.*, 756 F. Supp. 487, 488-489 (10th Circuit, D. Colo. 1991) (summary judgment nonmovant was required to produce substantial evidence supporting all required elements of claim; plaintiff met that burden with evidence that defendant hired 39 younger workers with less experience, permitting inference by jury of age discrimination against him).

The age statistics provided by Mercer show that out of 66 investment consultants hired over the four years 1997 to 2000, no less than 95% were below the age of 45. Pasha went on to calculate the probability of this happening if the defendants had been truly non-discriminatory in their recruiting policy. Pasha calculated this to be a staggering 1 in 20,000, or a near impossibility, with a standard deviation of 5.2 times. (See top of page A-137).

Stated differently, over the four years 1997 to 2000, Mercer hired a total of 66 investment consultants out of which 57

consultants were below the age of 40, 8 investment consultants were between the ages of 40 to 45, and 1 over the age of 50. But, is one or even nine enough to establish that Mercer does not discriminate by age in their hiring policies? The probability of this being true is less than 1 in 20,000, or extremely unlikely, with a standard deviation of 5.2 [2].

Thus, we have a series of age statistics which are overwhelming in their conclusions.

Pasha was at least as well qualified as those recruited and the defendants have graciously admitted on more than one occasion that he was qualified for the job he had applied for of Senior Investment Consultant.[3]

(4) "the statistics Pasha set forth in his opposition papers were properly disregarded as unreliable."

Since all the statistics discussed in the previous section were provided by Mercer, it is difficult to see how the statistics are "unreliable", as this Court's Summary Order states.

The data provided by Mercer in the previous section for 66 investment consultants was plotted in the form of a bar chart on page 28 of POB and on pages A-132 (Table E) and A-133 (Chart F). The strong bias in favor of young recruits becomes apparent immediately. (Nearly three-quarters of the recruits were under age 35, and 95% were below age 45).

Perhaps, this court's comment of "unreliable" refers to the AIMR data used by Pasha to calculate probabilities and standard deviations only. If so, there is no need to talk of

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[2] These probabilities and standard deviations were calculated and all assumptions stated in great detail on pages A-132 to 137 of the Appendix and these were again discussed in POB on pages 27 to 30.

[3] Please see footnotes on pages 4 and 32 of POB. Also footnote 4 on page 11 of this petition.

probabilities or standard deviations and Mercer's raw data (which presumably is reliable) stands as proof of employment discrimination on it own.

(5) "Mercer articulated non-discriminatory reasons for its decision not to hire Pasha."

All employers have the absolute right to make their own business decisions, right or wrong, but it is illegal to discriminate in employment on the basis of age or national origin.

Defendants' reasons for not hiring Pasha are a bagful, contrived and all pretextual. They have evolved and mutated over time. Over five and one-half years Mercer has provided a total of seventeen "legitimate non-discriminatory business" reasons for not hiring Pasha (see footnote 5 on page 37 of POB or top half of page 16 of PRB) and finally settled on the reason of Pasha's so-called "condescending personality". This and other reasons all lack credence because, as may be appreciated, he would hardly have been "condescending" in his circumstances!

Alam, the head of investment consulting at that time, after interviewing Pasha had told him that he would become a Principal of the firm. (See middle of page POB-7). This fact was documented in affidavits to the EEOC and was never denied by the defendants at any time. Why then was he not appointed? As documented in the opening brief on top of page 34 of POB, Mercer was losing consultants at that time and needed investment consultants. They proceeded to hire 16 consultants the same year.

(6) "Pasha did not raise a triable issue that Mercer's non-discriminatory reasons were a pretext for discrimination."

Please see immediately preceding section (5) above. Triable issues that exist under ADEA and Title VII are that the plaintiff was not hired as an investment consultant on account of his age and/or his national origin.

[7] "Because summary judgment was properly awarded to Mercer, the district court's denial of Pasha's Rule 59(e) motion was not an abuse of discretion."

The award of summary judgment by the District Judge was not "proper" for the following several reasons: Pasha amply established a prima facie case under the *McDonnell-Douglas* standard in his opening brief in Section II F on pages 38 and 39 and on pages A-119 to 140 inclusive by stating that (1) he was a Pakistani aged 54 at the time of applying for the job of Senior Investment Consultant with Mercer, (2) that as an Actuary and CFA, and with practical experience in money management, he was qualified for the position of Senior Investment Consultant applied for – and defendants have conceded that Pasha was qualified on more than one occasion[4], (3) that he was not hired in January 2000, and (4) that after rejecting Pasha, Mercer hired 16 investment consultants in the year 2000, all of whom were aged 41 or younger, and between 13 and 31 years younger than him.

Mercer have twice accepted that Pasha was qualified for the job applied for but do not provide a single cogent or believable reason for not hiring him. (See PBR page 16, POB pages 32 to 38 and A-145 to 161). Also, the Statements of Disputed and Undisputed Facts under Rule 56.1 were repeatedly overlooked.

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[4] Defendants also admit this in the last paragraph on page 10 of their Memorandum of Law dated May 30, 2003. (A-184)

Marsh & McLennan Companies, Inc., the parent company

Marsh & McLennan Companies, Inc., wholly-owns the two defendants-appellants in this case and is the ultimate parent company. As discovered during the depositions of Asghar Alam and Alan Vernick, the legal affairs of Mercer are centered in the parent company's legal department.

The commentaries in the preceding section (Argument IV) make it abundantly clear that Pasha's views have not been considered and that his briefs have been ignored almost completely.

Being a pro se plaintiff against a major Fortune 500 corporation, Pasha has been treated despicably by this Court of Appeals. Although his opening and reply briefs to this court were properly researched, carefully argued and professionally written, he has not been given the benefit of even a short legal opinion by this court. Instead, he has been dismissed summarily in a two-page order (excluding the cover page), one-half of which is filled with legal platitudes and the remaining two paragraphs contain only subjective and summary conclusions.

The impression is created that this lawsuit is more a national origin discrimination case (perhaps targeted against an individual, Asghar Alam), whereas it is primarily an age discrimination case based on age remarks, statistics, precedents and arguments. No less than 38 pages of Pasha's opening brief out of a total of 42 pages refer to age discrimination, with only 4 referring to national origin. (The objective here appears to be to dissuade age discrimination lawsuits against large corporations, since national origin charges are much less common).

The statement that the Court has "constru[ed] the evidence in the light most favorable to the non-moving party" is patently

untrue. (See Section IC, pages 12-15 of POB). It is also false that the court "construe[d] ...[pro se] litigant's appellate briefs and other pleadings and read such submissions liberally to raise the strongest arguments they suggest." These two statements in the court's Order make a mockery of the legal process. In any case, Pasha has never asked for this leniency and all he has ever wished for is some rational, factual explanation of the district court or this court's decisions and summary conclusions -- which have rarely been forthcoming.

This Court's Summary Order dated June 22, 2005 is an affront to the integrity of the American justice system. It is a fraud perpetuated by the two defendants-appellees through their legal counsel Winston & Strawn LLP. The latter is a firm with more than 850 lawyers and one of the largest in the country. Winston & Strawn's actions are designed also to protect its wealthy client Marsh & McLennan Companies, Inc. from future employment discrimination lawsuits by pro se plaintiffs.

As described in detail on pages 16 to 18 of Pasha's reply brief, Marsh & McLennan Companies, Inc., has been charged with several counts of fraud at multiple levels by Mr. Eliot Spitzer, Attorney General for the State of New York. Since then, they have entered into a settlement agreement with Mr. Spitzer for no less than $850 million.

During oral argument on March 4, 2005, Winston & Strawn's representative did not rebut any of Pasha's legal arguments[5], or offer any of his own, and simply told the panel of judges that he was ready to "answer any questions". In the event the judges did not ask him any questions. (This may be verified from the audiotapes of the session.)

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[5] Please see elsewhere in this petition for arguments about Rule 56.1 and the *Reeves v. Sanderson Plumbing* case.

Pasha questions whether it is the duty or responsibility of an appellate court to protect a major corporation from future age discrimination lawsuits from its employees or others acting pro se. Perhaps, this is an issue that should be raised with the Supreme Court, especially when its directives to lower courts are violated in the process.

V. Pasha established his case using Rule 56.1 and the *McDonnell-Douglas* and *Liberty Lobby* standards.

Although the district court listed the four elements required to establish employment discrimination, it neither applied, with any degree of rigor, the *McDonnell-Douglas* standard to establish a prima facie case nor did it use the standard set by the Supreme Court in *Reeves v. Sanderson Plumbing* to establish pretext. (POB, Section II A-F, pages 21-39)

Pasha established his prima facie case under the *McDonnell-Douglas* standard (see page 10, last paragraph, of this petition), and under F.R.C.P Rule 56(f), and provides sufficient evidence under the *Liberty Lobby* standard to prove his case before a jury. (PRB, pages 21-24).

Summary judgment should not have been granted when Mercer could not provide a clear reason why Pasha was not hired, and when Pasha has established in the opening brief that the multitude of business reasons supplied by Mercer were all pretextual (PRB page 16, POB 32-38).

Pasha realizes that he has to provide "substantial evidence" under the *Anderson v. Liberty Lobby* standard in order to defeat summary judgment. He has done so in his briefs, and is confident that he can meet his burden of persuasion in front of a jury by either the preponderance of evidence standard or the higher clear and convincing evidence standard, whenever required.

Mercer is the largest investment consulting group in the country and not getting the job that was promised to him has been a major loss to Pasha, affecting his career and life.

VI. Denial of the Rule 59(e) motion was an abuse of the district judge's discretion.

The sole objective of Pasha's 59(e) motion was to try to prevent manifest injustice to himself. The abuse of discretion occurred because the honorable district judge ruled against him but refused to discuss any of the facts or issues raised in Pasha's 22-page 59(e) motion to alter or amend judgment. Pasha's Rule 59(e) motion to alter or amend judgment was well supported and wrongly denied

The district court has no discretion to grant a motion for summary judgment if the standard set forth in Rule 56 is not met. If a genuine issue of material fact exists, or if movant is not entitled to judgment as a matter of law, the district court may not grant judgment. *Marcus v. St. Paul Fire and Marine Ins. Co.*, 651 F.2d 379, 382 (5th Cir. 1981) (Please see pages 39-42 of opening brief for details).

Although a statement of reasons by the district court judge is not required by the terms of Rule 56, appellate courts have stressed the importance that the district court include a statement of reasons for granting summary judgment. *Jot-Em-Down Store, Inc. v. Cotter & Co.*, 651 F.2d 245, 247 (5th Cir. 1981) (after antitrust litigation trial judge directed verdict without giving reasons or indicating evidentiary support for decision; appellate court remanded for trial court to do so). *McIncrow v. Harris County*, 878 F. 2d 835, 836 (5th Cir. 1989) (appellate court vacated order for summary judgment in employment discrimination case and remanded case to district court to state reasons for grant of summary judgment for defendant).